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Supreme Court, U.S.
FILED
OCT 27 1994
OFFICE OF THE CLERK

No. 94-207

In The

Supreme Court of the United States

October Term, 1994

GRUPO PROTEXA, S.A. A COMPANY ORGANIZED UNDER THE LAWS OF THE REPUBLIC OF MEXICO, AND CONDUX S.A. DE C.V., A COMPANY ORGANIZED UNDER THE LAWS OF THE REPUBLIC OF MEXICO,

Petitioners,

vs.

ALL AMERICAN MARINE SLIP, A DIVISION OF MARINE OFFICE OF AMERICAN CORPORATION, A NEW YORK CORPORATION, AFIA, A DELAWARE CORPORATION, AND CIGNA, A DELAWARE CORPORATION,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit

REPLY BRIEF IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

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A. Summary of Reply.

The Court directed Respondents to brief the substantive legal issues raised in the Petition. Instead, Respondents ignored the legal arguments in the Petition and created factual smoke screens intended to obfuscate rather than frame the dispositive legal issues. Accordingly, further legal argument is unnecessary, and only brief factual clarification is required.

B. The "Anchorage Prohibited Zone".

The first smoke screen submitted in Respondents' opposition brief, is the suggestion that it is "questionable" whether Mexico had the right under international law to designate a "safety zone" around the concentration of oil platforms and pipelines in the area where the Huichol sank. Even if it were so, the point is legally meaningless.[1] The Third Circuit ruled that the order was invalid under Mexican, not international law. Respondents simply ignored Petitioners' argument that the comity underpinnings of the act of state doctrine require an American court to presume the validity of a foreign sovereign's act under that foreign sovereign's law.[2]

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1. It should be noted that all of the international marine chartmakers, including the U.S. Defense Mapping Agency and the British Admiralty, not merely the government of Mexico, designate a zone around the core of the Campeche oil field operations where mariners are warned to exercise extreme caution due to the network of substantially uncharted pipelines located there.

2. In any case, Mexico's jurisdiction under international law to order the removal of the wreck is not premised on the "safety zone" designation. Rather, it is found in the United Nations Convention on the Law of the Sea Treaty which grants Mexico sovereignty and jurisdiction in its Exclusive Economic Zone (within which the Huichol sank by a margin of over 150 miles) for purposes of preserving, protecting, conserving and managing the natural resources in the zone.

C. The Mexican Act of State.

The second specious suggestion by Respondents is that the courts below did not review *de novo* a determination by competent Mexican officials. Respondents have never before suggested or argued that the removal order was not an act of the Mexican Government. It is and has throughout this litigation been undisputed that the removal was ordered by a Mexican governmental official, acting in his official capacity as a representative of the Marine Mercante Department of the Secretariat of Communications and Transportation. The legality of the act was affirmed by the general director of the Marine Mercante, and the Legal Advisor to the Mexican Ministry of Foreign Affairs. Moreover, as set forth in the Petition, the trial court expressly found that the port captain was acting as a representative of the Mexican Government. That finding was not appealed.

D. Respondents Were Direct Insurers.

Finally, it is preposterous for Respondents to now claim that they did not have the right or opportunity to cause the validity of the removal order to be questioned prior to the completion of the removal operation. For the almost 10-year history of this case, Respondents have conceded that the Policy was in substance a direct form of insurance between Petitioners and the Policy underwriters, including Respondents. Respondents adopted this position for their own benefit. If it were in fact a true reinsurance policy, Respondents would have been bound by the Mexican underwriter's admission of liability. That is why, as conceded in footnote two of the opposition brief, Respondents never before raised lack of privity as a defense.[3]

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3. The only reason the Mexican underwriters are identified as the "assureds" under the Policy is because under Mexican law in effect at the time,

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It must also be observed that regardless of whether there was a claims control clause in the Policy, from a practical standpoint Respondents' claim that they did not have the opportunity or right to cause the validity of the removal order to be challenged is simply absurd. As set forth in the Petition, Respondents had two surveyors representing their interests on-site during the removal operation. Despite complete knowledge of what was happening during the entire removal operation, neither Respondents' on-site representatives nor the home office representatives ever queried the validity of the Removal Order, or suggested that Petitioners should make further inquiry into its validity, or challenge it. Instead Respondents remained silent and passive while Petitioners attempted, under extremely difficult conditions, to minimize the loss to all of the underwriters, including Respondents. Respondents should not now be heard to claim they are being deprived of an opportunity to challenge the validity of the order with Mexican law.

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insurance contracts had to be placed with a Mexican insurance company. No Mexican underwriter, however, had the capability to underwrite the risks presented here. To overcome that problem, Petitioners negotiated the terms of the Policy directly with the Policy underwriters. Once the terms and conditions were agreed upon, the Policy was placed with the Mexican underwriters, who simultaneously laid off 95% of the risk on the American and English underwriters. By retaining 5% of the risk, the Mexican underwriters remained as nominal insurers and satisfied the statutory requirements. All communications and negotiations before and during the life of the Policy, however, were directly between Petitioners and the Policy underwriters, including Respondents. In sum, the form of the Policy was merely a convenient formality — all parties to it, including Respondents, recognized that the substance of the contractual relationship was insuror-insured.

E. Conclusion.

For the foregoing reasons, as well as the reasons stated in the Petition and Supplemental Brief, Petitioners respectfully request that this Court grant its petition for a writ of certiorari to the United States Court of Appeals for the Third Circuit.

Respectfully submitted,

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